

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEFENDANTS' EMERGENCY MOTION TO MODIFY SCHEDULING ORDER

Defendants CCBN.com, Inc. (“CCBN”), The Thomson Corporation (“Thomson”), and Robert I. Adler (“Adler”) (collectively “the Defendants”), by and through their respective counsel and pursuant to Local R. 16.1(G), jointly move to modify the Scheduling Order as follows: (1) the fact discovery deadline, currently set for October 1, 2005, would be postponed by thirty (30) days as to any depositions that have been noticed by the end of September 2005; and (2) the deadline for the submittal of expert reports would be moved from November 1, 2005, to November 7, 2005. In support of this motion, the Defendants jointly state as follows:

1. On July 27, 2005, the Boston Globe published an article reporting that Palmer & Dodge LLP, which represents Plaintiff Direct Report Corporation d/b/a Shareholder.com ("Shareholder"), and Edwards & Angell, LLP, which represents Adler, were negotiating with each other about a possible merger of the two law firms. The prospect of this merger has tremendous ramifications for this lawsuit, because if it occurs, current counsel for both Shareholder and Adler will have to withdraw to avoid the obvious conflicts of interest.

2. Uncertainty over whether and when this theoretical merger might take place has affected various aspects of the parties' discovery plans and has prompted Shareholder to hire Robert S. Frank, Jr., of Choate, Hall & Stewart as an additional attorney in case Palmer & Dodge needs to withdraw. Adler has not yet had a potential successor counsel enter an appearance on his behalf.

3. Under the current Scheduling Order, which took effect on May 17 when this Court granted Defendant Adler's Motion for an Extension of the Discovery Deadline, fact discovery is set to close on October 1, 2005. The deadline for submission of expert reports on claims/counterclaims as to which party bears burden of proof is November 1.

4. Despite the lingering uncertainty over the prospect of a potential merger, each of the Parties has notified each of the other Parties of its intent to take certain depositions before the October 1 deadline. While objections have been raised regarding some of the depositions, and certain motions relating to those depositions either have been filed with this Court or are being contemplated by counsel, the Parties have agreed that it would be impracticable to complete all of them by October 1. As a result, several weeks ago, counsel began discussing the prospect of seeking a 30-day extension in the discovery deadline

5. Through negotiations, counsel for all parties agreed to the following deal: they would jointly ask the court for (1) a 30-day extension in the deadline for taking all fact depositions noticed by September 30, and (2) a postponement in the deadline for submitting initial expert reports from November 1 until November 7.

6. The terms of the deal are spelled out in a September 16, 2005, email exchange between counsel for Shareholder and counsel for CCBN, the copies of which is attached as Exhibit 1.

7. On September 19, 2005, Thane Scott, lead counsel for Shareholder, indicated his assent to this deal in an email, a copy of which is attached as Exhibit 2.

8. On September 21, Adler's counsel sent a draft of this agreed-upon Joint Motion to Modify the Scheduling Order to counsel for both Shareholder and CCBN.

9. While CCBN's counsel quickly responded to Adler's counsel with comments, Shareholder's counsel did not. Finally, after much prodding, Shareholder's counsel sent an email to Adler's counsel late in the day on September 26, which included a new draft Joint Motion. Shareholder's new draft included a clause stating: "The limited extension requested in this motion is intended to address the possible changes in counsel, and no further extensions will be sought on that basis." There had been no discussions of any such language in any of counsel's prior conferences regarding a possible 30-day extension.

10. Adler's counsel informed Shareholder's counsel that he was unwilling to bind Adler's successor counsel to any promise not to seek further extensions, but he would be amenable to including the following clause in the Joint Motion: "The limited extension requested in this motion is intended to address the possible changes in counsel, and no further extensions will be sought by present counsel on that basis."

11. Shareholder's counsel has refused to accept this compromise and has withdrawn his support for the Joint Motion on the terms to which he previously agreed.

12. As a result, the Defendants have had to file this emergency motion without Shareholder's assent.

13. In light of Shareholder's refusal to honor its previous agreement, there is now even less time to complete all of the depositions that have been noticed for this month. The

Defendants jointly request an immediate 30-day extension on terms consistent with their original agreement with Shareholder.

14. If this Court approves the postponement of the fact discovery deadline, additional time may be required to prepare initial expert reports. Therefore, the Parties agree that the deadline for submitting such reports should be moved from November 1 until November 7.

WHEREFORE, the Parties jointly move for the entry of the Modified Scheduling Order that is attached as Exhibit 3.

ROBERT ADLER
By his attorneys,

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